IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/06/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.9963 OF 1995
and
WMP.NOs.15794, 24245, 24246 OF 1995 & 29294 OF 1999

The Chief Engineer/Personnel,
Tamil Nadu Electricity Board,
8th Floor, N.P.K.R.R. Maaligai,
Madras 600 002. .. Petitioner

-Vs-

1. S. Balasubramanian,
represented by Secretary,
Tamil Nadu Electricity Board,
Accounts and Executive Staff Union,
No.29, Meeran Sahib Street,
Anna Salai, Madras 600 002.

2. The Presiding Officer,
I Additional Labour Court,
Madras. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : MrS. Rajeswaran

For Respondents : Mrs.Narmada Sampath

:J U D G M E N T

The present writ petition has been filed on behalf of the Tamil Nadu Electricity Board challenging the award dated 29.11.1994 passed in I.D.No.399 of 1988 directing reinstatement of the respondent No.1.

2. The facts in brief are as follows :-

The respondent No.1 was working under the Board as Inspector of Assessment at Tiruchirapalli. He was transferred to Ittamozhi and joined duty on 19.6.1985. He remained absent from 20.6.85 to 21.1.86 without prior sanction and during the aforesaid period, he had worked for four days, namely

19.6.85, 24.10.85, 8.1.86 and 22.1.86. Relating to the aforesaid allegation, charge memo dated 22.2.1986 was framed. Subsequently on 13.3.86 another charge memo was framed alleging that the first respondent has drawn false T.A. Bills. Relating to the first charge memo, the first respondent asked for extension of time to submit his explanation but, even by the extended time, no explanation was furnished. The enquiry officer thereafter fixed the enquiry to 2.5.86. Thereafter the enquiry officer proceeded to hold the enquiry ex-parte and found that the allegations were correct. In respect of second set of charge memo dated 13.3.86, the first respondent also did not submit any explanation and the enquiry was fixed to be held on 2 8.5.86. Even though initially the respondent No.1 attended such enquiry, subsequently, he dissociated himself and the enquiry officer conducted the enquiry ex-parte and submitted his finding holding the first respondent guilty. On receipt of the findings from the enquiry officer, the Chief Engineer, who was the appointing authority, imposed punishment of dismissal by order dated 19.5.86. The appeal preferred by the respondent No.1 was rejected on 19.2.88. After submission of a failure report, I.D.No.399 of 1988 was initiated. The Labour Court has passed an order of reinstatement with full backwages, continuity of service and all attendant benefits, which is being challenged in the present writ petition.

3. One of the main grounds of interference is to the effect that the departmental proceeding was initiated by the Superintending Engineer, who was not the appointing authority. It has been submitted by the petitioner that in the standing order there is a provision contemplating initiation of departmental proceedings by the Superintending Engineer and it is not always necessary that the proceedings should be initiated by the appointing authority and not by an inferior officer. The Labour Court has relied upon the decision reported in 1992 WLR 472 (TAMIL NADU ELECTRICITY BOARD, REP. BY ITS CHAIRMAN,MADRAS AND 2 OTHERS v. A. PARANTHAMAN) to come to a conclusion that the departmental proceedings can be initiated only by the appointing authority.

4. Apart from the above technical defect, the Labour Court on consideration of the materials on record also came to the conclusion that the domestic enquiry was not fair and proper and the first charge memo had not been proved as sufficient materials were not available to show that the leave applied for by the first respondent was refused or had not been granted. The materials on record also reveal that the respondent No.1 was suffering from heart problems which were apparent from his leave letters as well as other documents, and therefore, the absence cannot be held to be unjustified. Regarding the second set of charge, on consideration of the evidence, the Labour Court again came to the conclusion that the allegations had not been proved through proper evidence.

5. So far as the first question is concerned it relates to competence of an officer inferior to appointing authority initiating departmental proceedings. Inspite of the decision of the Division Bench in 1 992 WLR 472 (cited supra), I have got my own doubts in the matter. In a departmental proceedings minor punishment may be imposed or major punishment such as dismissal or reduction in rank may be imposed. It is axiomatic that

major punishment can be imposed by the appointing authority and not by any inferior officer. However, a minor punishment can be inflicted not necessarily by the appointing authority but by some inferior officer depending upon the rules governing a particular case. At the time when proceeding is initiated, it cannot be predicated as to whether a major punishment or minor punishment would be imposed. Therefore, it cannot be laid as an inexorable rule that departmental proceedings can be initiated by the appointing authority and not by the authority inferior to the appointing authority. The authority ultimately would depend upon the punishment imposed. If a major punishment is imposed, such penalty has to be inflicted by a competent authority which invariably is the appointing authority or any authority superior to the appointing authority and not an authority inferior to the appointing authority. However, in the present case, it is not necessary to delve further into this aspect, as in my opinion, such conclusion by the Labour Court is not sustainable. The conclusion arrived on other aspects, on merits of the case, are not vulnerable.

6. The Labour Court on discussion of the relevant materials on record has come to the conclusion that the domestic enquiries had not been conducted in accordance with the principles of natural justice and thereafter the Labour Court on merit has come to the conclusion that the allegations against the respondent No.1 have not been proved. The High Court while considering a matter under Article 226 of the Constitution, does not sit as an appellate authority over the order of the inferior tribunal. Merely because a different view is possible on the materials on record, the High Court should not interfere with the findings of the inferior tribunal. In the present case, it cannot be said that the conclusions reached by the Labour Court are not based on materials on record and are perverse so as to warrant interference under Article 226 of the Constitution of India.

7. For the aforesaid reasons, even though I have got my own doubts on the first aspect regarding the observations made by the Labour Court in respect of the alleged defect in the initiation of departmental proceedings, since I do not find any scope to interfere with the conclusions of the Labour Court on other aspects relating to merit, the writ petition is liable to be dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes
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To

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